

CHAPTER 128. PESTICIDES

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Authority

The provisions of this Chapter 128 issued under the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61), unless otherwise noted.

Source

The provisions of this Chapter 128 adopted February 2, 1990, effective February 3, 1990, 20 Pa.B. 488, unless otherwise noted.

Cross References

This chapter cited in 7 Pa. Code § 138i.3 (relating to limitation on grants); 7 Pa. Code § 138j.3 (relating to limitation on grants); 7 Pa. Code § 138k.3 (relating to limitations on grants); and 7 Pa. Code § 147.726 (relating to operation).

Subchapter A. GENERAL PROVISIONS

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§ 128.1. Scope.

This chapter prescribes policies and procedures relating to the following:

- (1) The labeling, distribution, storage and registration of pesticides.
- (2) The classification of restricted use pesticides.
- (3) The certification of pesticide applicators.
- (4) The licensing of pesticide dealers, commercial and public pesticide businesses and pest management consultants.
- (5) The registration of pesticide application technicians and the prior notification of proposed pesticide applications.

§ 128.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61).

Application site—The specific location where a pesticide is applied.

Applicator certificate—A form issued by the Department to a commercial or public applicator following the successful completion of a certification examination or other certification requirements.

Area-wide application—A nonagricultural pesticide application to areas of 25 or more contiguous acres or a nonagricultural pesticide application made by or at the direction of a governmental entity to properties of more than one person.

Available if and when needed—The ability of a certified applicator to communicate with a person applying pesticides under his supervision so that the certified applicator can provide instructions and exercise control over the application and can be at the application site within 5 hours of receiving notification that his physical presence is necessary.

Business—A governmental entity or commercial establishment for profit or not-for-profit. For a pesticide application business having more than one place of business or operating under more than one name within this Commonwealth, each place of business and each name shall be considered a separate business. For a State or Federal entity, each district or region will be considered a separate business.

Common access area—The areas within a school building where students/attendees normally congregate, assemble or frequent during normal academic instruction or extracurricular activities. The term does not include areas such as kitchens, boiler rooms, utility/maintenance rooms and areas which are physically blocked or restricted from student/attendee access.

Current registry—The Pesticide Hypersensitivity Registry with the most recent effective date.

Department—The Department of Agriculture of the Commonwealth.

EPA—The United States Environmental Protection Agency.

Formulation—The physical composition of the pesticide product; for example, “dust,” “emulsifiable concentrate,” “wetttable powder” and “granular” are ways to describe the formulation of a pesticide product.

Fumigant—A pesticide that when released forms a gas.

General use pesticide—A pesticide not classified for restricted use.

Governmental entity—An executive or independent agency or unit of the Commonwealth, or local agency, including a county, a city, a borough, town, township, school district, municipal authority or political subdivision thereof.

Integrated pest management—The managed use of combined pest control alternatives, including cultural, mechanical, biological and chemical, to most effectively prevent or reduce to acceptable levels damage caused by pests.

Land contiguous to a restricted use pesticide application site—Premises which share a mutual border with the premises upon which the application site is located. The term does not include premises located more than 100 feet from the application site.

Pesticide end-use dilution—Pesticide material resulting from the dilution of a registered pesticide according to label direction.

Pesticide hypersensitivity—Excessive or abnormal sensitivity to pesticides.

Primary residence—An individual’s legal residence.

Prior notification—Notification of a proposed application of pesticides given not more than 45 days and not less than 14 days prior to the date of application which contains the following information:

- (i) The proposed date of application.
- (ii) The municipalities where the proposed application sites are located.
- (iii) The name, address and telephone number of a person to whom requests for additional information should be directed.

Private park—Privately owned outdoor real estate which includes a recreational area for use by the public, including an area with restricted access.

Production of an agricultural commodity—The term includes activities involved in the raising of plants or animals and their products. The term does not include the protection or maintenance of harvested crops, slaughtered livestock or plant and animal products unless the protection or maintenance is carried out by the original producer of the agricultural commodity, who is a private applicator, or another private applicator.

Public park—Publicly owned outdoor real estate which includes a recreational area for use by the public, including an area with restricted access.

Recreational area—An outdoor place of relaxation, play or exercise.

Restricted use pesticide—The term includes the following:

- (i) A pesticide classified for restricted use under section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. § 136(d)).
- (ii) A pesticide designated by the Secretary for restricted use under section 7(b)(6) of the act (3 P. S. § 111.27(b)(6)).

School—A public, nonpublic or licensed private elementary or secondary school wherein a resident of this Commonwealth may fulfill the compulsory school attendance requirements and which meets the applicable requirements of Title IV of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000c) (Public Law 88-352, 78 Stat. 241). The term also includes a kindergarten or preschool program operated by a school and a child day care center operating under a certificate of compliance issued by the Department of Public Welfare.

Secondary location—An address where an individual may be located other than the individual's primary residence, limited to the following:

- (i) Place of employment.
- (ii) School.
- (iii) Vacation home.

Secretary—The Secretary of the Department.

Service container—A container other than the original labeled container of a registered pesticide used for the purpose of holding, storing or transporting an original registered pesticide material or a pesticide end-use dilution.

Specific site application—A nonagricultural pesticide application made by or at the direction of a person to property owned or rented by that person.

Swimming pool—An outdoor or indoor place used for bathing or for amateur, professional or recreative swimming.

Under the direct supervision of—The term includes the following:

(i) For a commercial or public certified applicator, the application of a pesticide by a registered pesticide application technician acting with the instructions and under the control of a certified applicator who is responsible for the actions of the technician and who is available when needed; or the application of a pesticide by a nonregistered or noncertified employee acting with the instructions and under the control of a certified applicator who is responsible for the actions of the employee and physically present at the application site. The supervising applicator shall be certified in the appropriate category relating to the application.

(ii) For a private certified applicator, the application of a restricted use pesticide by a noncertified person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available when needed.

Upon written request—The term includes a notice of inspection issued by the Department.

Use, or cause to be used, a pesticide inconsistent with its labeling—The use of a pesticide in a manner not permitted by its labeling. This phrase does not include:

(i) Applying a pesticide at a dosage, concentration or frequency less than that specified on its labeling.

(ii) Applying a pesticide against a target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling unless the labeling specifically states that the pesticide may only be used for the pests specified on the labeling.

(iii) Employing a method of application not prohibited by the labeling.

(iv) Mixing a pesticide with a fertilizer where the mixture is not prohibited by the labeling.

Source

The provisions of this § 128.2 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945. Immediately preceding text appears at serial pages (172159) to (172160) and (182111) to (182112).

Cross References

This section cited in 7 Pa. Code § 46.1026 (relating to pesticides).

§ 128.3. Fees.

(a) *Pesticide dealer's license*. The annual fee for a pesticide dealer's license is \$10. The fee for a duplicate pesticide dealer's license is \$3.

(b) *Pest management consultant's license*. The annual fee for a pest management consultant's license is \$25. The fee for a duplicate pest management consultant license is \$8.

(c) *Pesticide application business' license.* The annual fee for a pesticide application business' license is \$35. The fee for a duplicate pesticide application business license is \$8.

(d) *Commercial applicator's certificate.* The annual fee for the commercial applicator's certificate is \$40. When the initial certification requires examination, no fee will be charged. The fee for a duplicate commercial applicator's certificate is \$10.

(e) *Public applicator's certificate.* The triennial fee for a public applicator's certificate is \$10. A fee is not required when the initial certification requires examination. The fee for a duplicate public applicator's certificate is \$3.

(f) *Examination fees.* Examination fees are nonrefundable. The following examination fees, with payment made in advance, will be charged:

- (1) Commercial/public applicator's core examination—\$50.
- (2) Commercial/public applicator's category examination—\$10.
- (3) Private applicator's examination—no charge.
- (4) Pest management consultant's examination—no charge except that a fee of \$5 will be charged if an examination is requested on other than a regularly scheduled examination date.

(g) *Registration fee for a pesticide application technician.*

(i) *Commercial pesticide application technician.* An annual registration fee of \$30 will be charged to register a commercial pesticide application technician with the Department. The fee for a duplicate technician registration is \$7.

(ii) *Public pesticide application technician.* An annual registration fee of \$20 will be charged to register a public pesticide application technician with the Department. The fee for a duplicate technician registration is \$7.

(h) *Private applicator's permit.* The triennial fee for a private applicator's permit is \$10. The fee for a duplicate private applicator's permit is \$3. A fee will not be charged for a special permit which may be issued in conjunction with the private applicator's permit.

(i) *Product registration.* The annual fee to register a pesticide is \$135.

Authority

The provisions of this § 128.3 amended under section 7(b) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)).

Source

The provisions of this § 128.3 adopted February 2, 1990, effective February 3, 1990, 20 Pa.B. 488; amended October 18, 1991, effective October 19, 1991, 21 Pa.B. 4949; amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended October 12, 2001, effective October 13, 2001, 31 Pa.B. 5704. Immediately preceding text appears at serial pages (206520) to (206521).

Cross References

This section cited in 7 Pa. Code § 128.45 (relating to recertification); 7 Pa. Code § 128.63 (relating to recertification); 7 Pa. Code § 128a.5 (relating to funding); and 7 Pa. Code § 128b.5 (relating to funding).

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PESTICIDE DEALERS

§ 128.11. Recordkeeping.

(a) A pesticide dealer shall keep for each sale of a restricted use pesticide a record containing the following information:

- (1) The name and address of the customer and his applicator's certificate number or business or dealer's license number.
- (2) The brand name and formulation of the restricted use pesticide that was purchased.
- (3) The amount of the pesticide that was purchased.
- (4) The date of the purchase.

(b) A record required to be kept under this section shall be maintained for at least 3 years and shall be made immediately available to the Department upon request or immediately available to medical personnel in an emergency.

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping).

PEST MANAGEMENT CONSULTANTS

§ 128.21. Determination of competence.

A pest management consultant shall prove his competence by passing a written proctored examination.

§ 128.22. Licensing.

Upon passing a written examination and the payment of the annual fee, the Department will issue a pest management consultant's license.

§ 128.23. Categories of pest management consultant.

The specialty categories for a pest management consultant will conform with the categories of commercial and public applicators established under § 128.42 (relating to categories of commercial and public applicators).

§ 128.24. Recordkeeping.

(a) A pest management consultant shall keep for each instance in which he provides technical advice, supervision or aid or makes a recommendation to the user of a restricted use pesticide, the following information:

- (1) The name and address of the person for whom this service was provided.
 - (2) The brand name and formulation of the pesticides recommended to be used.
 - (3) The amount of the pesticides recommended to be used.
 - (4) The dosage or rate of the pesticides recommended to be used.
 - (5) The date on which this service was provided.
- (b) A record required to be kept under this section shall be maintained for at least 3 years and shall be made immediately available to the Department upon request or to medical personnel in an emergency.

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping).

PESTICIDE APPLICATION BUSINESSES

§ 128.31. Licensing requirements.

- (a) A pesticide application business may not be operated without first obtaining a pesticide application business license.
- (b) The license period shall end on December 31 each year, except that the Department may issue a license for the following year when an initial license application is filed during the last 2 months of a licensing year.
- (c) A pesticide application business shall prominently display on every vehicle involved in the pesticide application phase of its business the license number assigned by the Department. The number shall be in figures at least 3 inches high and shall be located on both sides of the vehicle at a readily visible location.
- (d) A licensed business shall notify the Department in writing within 15 days of a change in information in its application for licensing, or if it is no longer engaged in the application of pesticides.
- (e) A business that meets the definition of a commercial applicator as defined in section 4(6)(C) of the act (3 P. S. § 111.24(6)(C)) may not apply a pesticide without having a certified applicator physically present at the application site unless all application personnel on site are registered technicians.

Source

The provisions of this § 128.31 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945. Immediately preceding text appears at serial page (144305).

§ 128.32. Categories of business licenses.

A commercial or public business shall identify in its application those business categories in which it desires to operate. A business shall employ for each busi-

ness category in which it makes a pesticide application at least one applicator who is certified in a specific applicator category recognized under the general business category and shall limit its applications to those applicator categories in which it employs at least one certified applicator. The business categories are listed in paragraphs (1)—(10). The applicator categories recognized under a particular business category are listed under that business category.

- (1) *Category (A)*—Agricultural Plant Pest Control.
 - 01 Agronomic Crops
 - 02 Fruits and Nuts
 - 03 Vegetable Crops
 - 05 Forest Pest Control
 - 08 Seed Treatment
- (2) *Category (B)*—Agricultural Animal Pest Control.
 - 04 Agricultural Animals
- (3) *Category (C)*—Ornamental and Turf Pest Control.
 - 06 Ornamental and Shade Trees
 - 07 Lawn and Turf
 - 22 Interior Plantscape
- (4) *Category (D)*—Aquatic Pest Control.
 - 09 Aquatic Pest Control
 - 24 Swimming Pools
- (5) *Category (E)*—Right-of-Way Pest Control.
 - 10 Right-of-Way
- (6) *Category (F)*—Industrial, Institutional, Structural and Health Related.
 - 11 Household and Health Related
 - 12 Wood Destroying Pests
 - 14 Industrial Weeds
 - 15 Public Health Vertebrate Pest Control
 - 16 Public Health Invertebrate Pest Control
 - 19 Wood Preservation
 - 23 Park or school Pest Control
- (7) *Category (G)*—Fumigation.
 - 13 Structural Fumigation
 - 20 Commodity and Space Fumigation
 - 21 Soil Fumigation
- (8) *Category (H)*—Demonstration and Research.
 - 18 Demonstration and Research Pest Control
- (9) *Category (I)*—Regulatory.
 - 17 Regulatory Pest Control
- (10) *Category (J)*—Aerial Applicator.
 - 25 Aerial Applicator

Source

The provisions of this § 128.32 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945. Immediately preceding text appears at serial pages (144305) to (144306).

§ 128.33. Assignment of work.

A pesticide application business may not permit an individual to make a pesticide application in an applicator category in which the individual has not been certified as an applicator or trained and registered as a technician.

§ 128.34. Financial responsibility.

(a) The Department will consider a certificate of insurance from an insurer or surety to be evidence of financial responsibility if the insurer or surety is licensed to do business under section 7 of the act of January 24, 1966 (P. L. 1509, No. 531) (40 P. S. § 1006.7), known as the Surplus Lines Insurance Law, or otherwise permitted by Federal law or the Insurance Department to do business in this Commonwealth, if the following conditions are met:

(1) The certificate of insurance includes the name of the insurance company, policy number, insurance amount, type of coverage afforded and exclusions relating to damage arising from the use of pesticides and expiration date of the policy.

(2) The minimum comprehensive general liability insurance provided is \$100,000 for each occurrence of bodily injury liability and \$100,000 for each occurrence of property damage liability. A policy may be written with combined limits if the limits equal or exceed the sum of the individual limits.

(3) The certificate indicates coverage for completed operations and includes a statement indicating that the coverage applies to pesticide application.

(4) The maximum deductible amount does not exceed \$1,000 of the combined policy limits. If a pesticide application business has not satisfied the deductible amount in a prior claim, the policy may not contain a deductible amount.

(5) A current certificate of insurance is forwarded to the Department at each insurance renewal date which sets forth the same information specified in paragraphs (1)—(4).

(b) A pesticide application business desiring to qualify as a self-insurer may submit a written proposal of self-insurance to the Department for approval.

(1) The proposal shall include the following:

(i) A master self-insurance and security agreement.

(ii) A balance sheet and income statement which shall reflect the actual financial condition of the business as of the last complete calendar or fiscal year preceding the date of the proposal. These documents shall be prepared in accordance with generally accepted accounting principles and shall be certified by a certified public accountant.

(2) A business will not be approved as a self-insurer unless it posts certain collateral with the Department. This paragraph does not apply to government agencies or authorities.

(3) The minimum required security that shall be furnished to the Department is \$500,000.

(4) Only the following will be accepted as valid collateral for self-insurance purposes:

(i) United States currency, including United States Treasury bills, United States Treasury notes or other negotiable obligations of the United States Government. United States Savings Bonds are not negotiable.

(ii) Evidence of escrow deposits in Federal or State banks, credit unions or savings and loan associations if Federally insured. Escrow deposits shall be established for the sole purpose of providing security to meet the duties of a self-insurer.

(iii) Irrevocable letters of credit issued by a bank in this Commonwealth or another bank as approved by the Department.

(iv) Surety bonds issued by insurers authorized or eligible to do business in this Commonwealth.

(v) Bonds or other negotiable obligations issued by a state, subdivision or instrumentality of a state in the United States, if not in default as to principal or interest.

(vi) Corporate bonds, issued by an entity other than the proposed self-insurer, rated A or better by Moody's Bond Record, Moody's Investors Service, Inc.

(vii) Other security approved upon petition to the Department.

(5) The Department will hold the collateral furnished for the benefit of the persons to whom the self-insurer is obligated.

(i) The self-insurer shall pay for obligations incurred under the act by assets readily reduced to liquid assets, such as demand deposits, time deposits, negotiable instruments and other assets which may be readily reduced to liquid form.

(ii) If the self-insurer is not able to discharge its obligations, the self-insurer may petition the Department to release the collateral posted as is necessary to satisfy the obligations of the self-insurer.

(iii) If withdrawals from collateral are required, the self-insurer shall replace the security within 72 hours from the date of withdrawal, to retain its certificate as a self-insurer.

(6) A self-insurer shall annually furnish to the Department a report of claims incurred during the preceding calendar year.

(7) Upon approval by the Department of a self-insurance proposal, a self-insurance certificate will be issued to the self-insurer. The certificate shall be renewed annually, after review that the Department deems appropriate.

(c) If the evidence of financial responsibility furnished by a pesticide application business no longer complies with this section, the business shall immediately provide other evidence of financial responsibility which complies with this section. If it fails to do so, the Secretary may revoke its license.

Cross References

This section cited in 7 Pa. Code § 130d.26 (relating to financial responsibility).

§ 128.35. Recordkeeping.

(a) A pesticide application business shall keep for every application of a pesticide a record containing the following information:

- (1) The date of application. For a pesticide requiring a reentry time, the date of application shall include the hour completed.
- (2) The name and address of the customer and the address and location of the application site if different from the address of the customer.
- (3) The brand name and formulation of the pesticides used.
- (4) The amount of every pesticide used.
- (5) The dosage or rate of every pesticide used.
- (6) The name and the certificate or technician's registration number, whichever is applicable, of each person making or supervising the application.
- (7) The EPA product registration number.
- (8) The identification of the application site, including the specific field or land area and the crop and size of the area treated for pesticides used in the production of an agricultural commodity.

(b) When a restricted use pesticide is used in the production of an agricultural commodity, a copy of the record required under this section shall be provided by the application business to the customer within 30 days of the pesticide application.

(c) A record required to be kept under this section shall be maintained for at least 3 years and shall be made immediately available to the Department upon request or to medical personnel in an emergency.

Source

The provisions of this § 128.35 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945. Immediately preceding text appears at serial pages (144308) to (144309).

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping).

COMMERCIAL AND PUBLIC APPLICATIONS

§ 128.41. Requirements for certification.

(a) A person is deemed to be a commercial or public applicator and required to be certified if one or more of the following criteria are met:

- (1) A person, whether or not he is a private applicator with respect to some uses, who applies or supervises the application of a pesticide on the property or premises of another, including an easement.

(2) A person who applies or supervises the use of a restricted use pesticide on property owned by him or his employer when not applied for the purpose of producing an agricultural product.

(3) A person who applies or supervises the application of a pesticide to the following locations or who is involved in the following types of application:

(i) *Fumigation*—Includes a person who uses fumigants except a person who meets the definition of a private applicator.

(ii) *Golf courses*—Includes a person who uses pesticides in the establishment and maintenance of a golf course.

(iii) *Public and private parks*—Includes a person who uses a pesticide in a recreational or campground area of a public or private park.

(iv) *Educational and research institutions*—Includes a person employed by a public or private educational and research facility that uses pesticides in its educational or research programs.

(v) *Playgrounds and athletic fields*—Includes a person who applies a pesticide to a public playground or an athletic field.

(vi) *Apartment dwellings*—Includes an owner of an apartment building or an employe of an owner who applies a pesticide other than a disinfectant to an apartment structure of four or more units. Commercial certification is not required if the owner or employe resides in the apartment structure and applies general use pesticides to the unit in which he resides.

(vii) *Schools*—Includes a person who uses a pesticide on school property, except for the use of disinfectants and sanitizers within the school building.

(viii) *Swimming pools*—Includes a person who uses a pesticide in the care and maintenance of swimming pools or water recreation facilities associated with a public or private park, excluding lakes, ponds, rivers or streams.

(b) The following are exceptions to subsection (a)(3)(viii):

(1) Disinfectants and sanitizers not used for water treatment.

(2) The use of general use pesticides by an owner or resident in the care and maintenance of a swimming pool at a private single-family residence.

Source

The provisions of this § 128.41 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945. Immediately preceding text appears at serial pages (144309) to (144310).

§ 128.42. Categories of commercial and public applicators.

A commercial or public applicator applying or supervising the application of a pesticide shall be certified in one or more of the following applicator categories:

(1) *Agronomic crops*—The use of a pesticide in the production of an agricultural crop, including tobacco, grain, soybeans and forages and the application of a pesticide to noncrop agricultural land.

(2) *Fruits and nuts*—The use of a pesticide in the production of tree fruits, nuts and berries.

(3) *Vegetable crops*—The use of a pesticide in the production of vegetables, including, tomatoes, cabbage and celery.

(4) *Agricultural animals*—The use of a pesticide on animals, including beef cattle, dairy cattle, swine, sheep, horses, goats, poultry or other livestock and to premises where these animals are confined.

(5) *Forest pest control*—The use of a pesticide in a forest, forest nursery or forest seed producing area.

(6) *Ornamental and shade trees*—The use of a pesticide in the maintenance of an ornamental tree, shrub, flower or other ornamental.

(7) *Lawn and turf*—The use of a pesticide in the maintenance or production of lawn and turf.

(8) *Seed treatment*—The use of a pesticide on seed.

(9) *Aquatic pest control*—The use of a pesticide on standing or running water, excluding the use of a pesticide in a public health-related activity described in paragraph (16).

(10) *Right-of-way*—The use of a pesticide to maintain a public road, an electrical power line, a pipeline, a railway right-of-way or a similar type of area.

(11) *Household and health related*—The use of a pesticide in, on or around a food handling establishment, a human or nonagricultural animal dwelling, an institution such as a school or hospital, an industrial establishment, a warehouse, a grain elevator and other types of structures whether public or private. The application of a pesticide to protect a stored, processed or manufactured product is also included. The use of a fumigant, except where applied out-of-doors to a rodent burrow which does not lead into a dwelling or other structure, and except in the case of termite or other structural pest control is included. The treatment of an emergence crevice, an ant runway or a surface to control carpenter bees or the surface application of a pesticide to a wooden box, furniture or lumber is included.

(12) *Wood destroying pests*—The use of a pesticide to control or prevent termites, powder post beetles or other wood destroying pests infesting a residence, school, hospital, store, warehouse or other structures or structural components and an area adjacent to those structures.

(13) *Structural fumigation*—The use of a fumigant in or to a structure for the control of pests affecting the structure or its fixtures or inhabitants.

(14) *Industrial weeds*—The use of a pesticide to control vegetation around a structure, such as an oil tank, an industrial railway siding, an airport runway, a parking lot, a fence or an industrial building.

(15) *Public health vertebrate pest control*—The use of a pesticide to manage and control a vertebrate pest affecting public health.

(16) *Public health invertebrate pest control*—The use of a pesticide to manage and control an invertebrate pest affecting public health.

(17) *Regulatory pest control*—The use of a pesticide to control an organism designated by the Commonwealth or the Federal government to be a pest requiring regulatory restrictions or control procedures to protect man or the environment.

(18) *Demonstration and research pest control*—The use of a pesticide to demonstrate to the public the proper method of application for a pesticide and the use of a pesticide in research such as that undertaken by an extension specialist, county agent or vocational agriculture teacher.

(19) *Wood preservation*—The use of a pesticide in wood impregnation to control or prevent fungi, insects, bacteria, marine borers and other wood destroying pests and includes pole treating or restoration and the use of a fumigant for in-place treatment of utility poles.

(20) *Commodity and space fumigation*—The use of a fumigant in or to a structure, trailer, railcar, onboard ship, or in any type of fumigation chamber, such as under a tarpaulin for the control of pests in stored or in-transit commodities.

(21) *Soil fumigation*—The application of a fumigant to a soil environment.

(22) *Interior plantscape*—The use of a pesticide to control plant pests when the soil or plant to be treated is located within an enclosed structure.

(23) *Park or school pest control*—The use of a pesticide in a campground or recreational area of a public or private park or on school property.

(24) *Swimming pools*—The use of a pesticide in the care and maintenance of swimming pools.

(25) *Aerial applicator*—The use of a pesticide applied by aircraft to any crop or land area. Applicators in this category shall comply with § 128.83 (relating to ornamental or turf application) when making ornamental or turf applications.

Source

The provisions of this § 128.42 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945. Immediately preceding text appears at serial pages (144310) to (144312).

Cross References

This section cited in 7 Pa. Code § 128.23 (relating to categories of pest management consultant); 7 Pa. Code § 128.43 (relating to determination of competence); and 7 Pa. Code § 128.44 (relating to eligibility).

§ 128.43. Determination of competence.

(a) For each of the categories listed in § 128.42 (relating to categories of commercial and public applicators), competence in the use and handling of pesticides shall be determined on the basis of a written examination. The examination will include the following:

- (1) Areas of knowledge and competence set forth at section 16.1 of the act (3 P. S. § 111.36a).

- (2) Safety.
- (3) Labeling and label comprehension.
- (b) An examination for certification will consist of two parts:
 - (1) One part of the examination, the core area, will be based on general information required of commercial and public applicators.
 - (2) The second part of the examination will be based on information related to the specific categories of commercial and public applicators.
- (c) An examination shall be proctored. A person may use approved reference sources during an examination. Successful completion of the core area, and successful completion of part two of the examination in a specific category will entitle a person to certification in that category. A person desiring certification for additional categories will be required to be examined for each additional category. An opportunity will be provided to retake an examination when a passing grade has not been achieved.
- (d) If a person successfully completes only one part of the two-part examination, successful completion of the remaining part of the examination shall be obtained within 180-calendar days from the date the initial part of the examination was successfully completed.
- (e) An application to take an examination shall be filed along with the appropriate fee with the Department within 10-working days prior to the date of the examination.
- (f) A person may not use a reference source during an examination unless approved by the Department or its designated agents.

Source

The provisions of this § 128.43 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945. Immediately preceding text appears at serial pages (144312) to (144313).

Cross References

This section cited in 7 Pa. Code § 128.44 (relating to eligibility).

§ 128.44. Eligibility.

- (a) A person is eligible for certification upon fulfilling the requirements under §§ 128.41—128.43 (relating to requirements for certification; categories of commercial and public applicators; and determination of competence). In addition to the requirements for a commercial applicator's certification, an aerial applicator shall have a current commercial agricultural aircraft operator's certificate issued by the Federal Aviation Administration under 14 CFR 137.19(a) (relating to certification requirements).
- (b) Within 12 months of becoming eligible to be certified as a commercial applicator, a person shall file with the Department an application for certification. A person who fails to file an application within this 12-month period will lose certification eligibility and shall again establish eligibility in accordance with

§§ 128.41—128.43. An application for initial certification will be accepted from an eligible person throughout the year. A certificate shall expire on September 30 following the date of application, except that the Department may issue a certificate for an additional year when an application is initially filed during the last 2 months of the certification year.

(c) Once a certification has expired, no further use of pesticides as allowed by the certification will be permitted. Eligibility for certification shall remain under subsection (b).

(d) If a person allows his certification to expire in the triennial year in which recertification credits are due, recertification shall require completion of delinquent recertification credits as described in § 128.45 (relating to recertification) and satisfaction of the requirements for eligibility of subsection (b).

(e) If a person fails to complete delinquent recertification credits within 1 year from the triennial certification expiration date, the person is required to meet the requirements of §§ 128.3, 128.43 and 128.44 (relating to fees; determination of competence; and eligibility).

Source

The provisions of this § 128.44 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945. Immediately preceding text appears at serial page (144313).

§ 128.45. Recertification.

(a) At intervals of 3 years, a certified commercial or public applicator shall provide evidence of having received current update training in technology relating to pesticides in the specific categories in which he is certified to maintain certification. Training will be divided into core and category specific areas as follows:

(1) *Core.*

- (i) Safety and health.
- (ii) Labeling and label comprehension.
- (iii) Environmental protection.
- (iv) Equipment use, calibration and dosage calculations.
- (v) Protective clothing and respirator equipment.
- (vi) Cleaning and maintaining equipment.
- (vii) Transportation, storage and disposal.
- (viii) Applicable State and Federal laws.

(2) *Category specific.*

- (i) Identification of pests.
- (ii) Appropriate control measures.
- (iii) Integrated pest management.

(b) Recertification credits will be given on the basis of attendance at meetings or other appropriate training approved by the Department. Training will be evaluated by the Department and assigned credits. A person is required to meet

the credit requirements in the “Pennsylvania State Plan for Certification of Pesticide Applicators.” This plan has been filed with and approved by the EPA in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. §§ 136—136y). Records of training will be maintained by the Department and a yearly statement will be sent to each certified commercial or public applicator describing credits obtained and credits due to meet recertification standards.

(c) Training will be approved based on the following criteria:

(1) Training shall be conducted or sponsored by an educational institution, an individual, an association, a business or a governmental agency.

(2) Training shall be approved for recertification credits at the rate of 1 credit per 30 minutes of applicable instruction, exclusive of coffee breaks, lunches, visits to exhibits, and the like.

(3) Sponsors of recertification training shall submit a written request for course approval to the Department’s regional office for the region in which the meeting will be held. A request to approve out-of-State training shall be submitted to the Department of Agriculture, Bureau of Plant Industry, Agronomic Services Division, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. A request shall be submitted at least 15 working days prior to the training date.

(4) A request for training approval shall include the following information:

(i) The name and phone number of the contact person who is coordinating the meeting.

(ii) The specific location of the meeting.

(iii) The date of the meeting.

(iv) A listing of the speakers, subject matter and time allotted to each subject.

(v) A statement of whether the meeting is opened to the public and if there is a charge to attend.

(5) Statements made in a request to approve training shall be supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(6) Credits will be assigned to each training meeting based upon the subjects covered and the amount of time expended on each subject.

(7) If an employe of the Department is unable to monitor the training, the meeting coordinator is responsible for authenticating attendance and shall compile an approved list of Pennsylvania certified applicators in attendance. The lists shall be returned to the Department within 10-working days following the meeting date and shall include the name of each individual attending and his applicator’s certificate number.

(8) Credits assigned may be modified if either the content or time of the actual meeting differs from the original written request for approval.

(9) Falsification by a course sponsor of information required under this subsection may result in the withdrawal of course approval.

Source

The provisions of this § 128.45 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945. Immediately preceding text appears at serial pages (144313) to (144315).

Cross References

This section cited in 7 Pa. Code § 128.63 (relating to recertification).

PESTICIDE APPLICATION TECHNICIANS

§ 128.51. Training program.

(a) A pesticide application technician shall obtain instruction in, and possess adequate knowledge of, the proper use and handling of pesticides. The training program shall include:

- (1) Those areas of knowledge described in section 16.2 of the act (3 P. S. § 111.36b).
- (2) Spill handling.
- (3) Human health and environmental effects.

(b) The technician training program shall include a sufficient level of on-the-job training to allow the technician to competently perform the functions associated with an application of pesticides in which the technician is anticipated to be involved.

(c) A technician is not permitted to make a pesticide application using techniques, pesticides or equipment not included in his training.

(d) A technician shall undergo annual training to assure that his knowledge is adequate for satisfactory completion of his work related duties.

(e) A certified applicator with at least 1 year's experience in the categories in which the technician is to be trained shall be responsible for administering the training program. This person shall develop a training program which includes the appropriate level of training needed by the technician to satisfactorily complete work related duties subject to disapproval by the Department.

Cross References

This section cited in 7 Pa. Code § 128.53 (relating to recordkeeping).

§ 128.52. Registration.

(a) A business shall submit to the Department by first class mail, postage prepaid, on a form provided by the Department, a list of persons it intends to register as technicians. The postmarked date will indicate the beginning of a training period to consist of at least 30 days of training.

(b) At the completion of training, the business shall file with the Department an application to register the technician. The application shall be signed by the

certified applicator responsible for administering the training program and the technician verifying satisfactory completion of the training program. The annual registration fee shall be submitted with the application.

(c) A registration expires on February 28 each year.

(d) An application for a new registration will be accepted throughout the calendar year. A full year's registration fee will be required for a portion of a year, except that the Department may issue a registration for an additional year when an application is initially filed during the last 2 months of the registration year.

(e) A pesticide application business shall register a technician annually with the Department and shall submit evidence of training, as required by the Department, in addition to the registration fee.

(f) A technician's registration may not be transferred from one business to another.

Source

The provisions of this § 128.52 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945. Immediately preceding text appears at serial page (144316).

§ 128.53. Recordkeeping.

(a) A pesticide application business employing a technician shall keep records of training provided to meet the requirements of § 128.51 (relating to training program).

(b) A record required to be kept under this section shall be maintained for at least 3 years and shall be made immediately available to the Department upon request.

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping).

PRIVATE APPLICATORS

§ 128.61. Determination of competence.

(a) Competency in the use and handling of restricted use pesticides by a private applicator will be determined on the basis of a written examination. The examination will include the following:

(1) Areas of knowledge described at section 17.2 of the act (3 P. S. § 111.37b).

(2) Transportation, storage and disposal.

(b) An opportunity will be provided to retake an examination if a passing grade has not been achieved.

Cross References

This section cited in 7 Pa. Code § 128.62 (relating to eligibility); 7 Pa. Code § 128.63 (relating to recertification); and 7 Pa. Code § 128.64 (relating to fumigation by a private applicator).

§ 128.62. Eligibility.

(a) A private applicator will be eligible for a permit upon fulfilling the requirements of § 128.61 (relating to determination of competence) and subsection (b).

(b) Within 1 year of fulfilling the requirements of § 128.61, a private applicator shall file with the Department an application for a permit accompanied by the appropriate fee. A person who fails to file within this 1 year period shall again establish eligibility under § 128.61.

(c) A private applicator will be issued a numbered permit which shall be used by the applicator when purchasing a restricted use pesticide.

Cross References

This section cited in 7 Pa. Code § 128.63 (relating to recertification).

§ 128.63. Recertification.

(a) At intervals of 3 years, a private applicator shall have accumulated credits as a result of having received update training approved by the Department in technology relating to the proper and safe use of pesticides to continue as a permitted private pesticide applicator. Training will be divided into core and category specific areas as specified in § 128.45(a) (relating to recertification).

(b) Recertification credits will be given on the basis of attendance at meetings or other appropriate training approved by the Department. Training will be evaluated by the Department and assigned credits. A person is required to meet the credit requirements in the *Pennsylvania State Plan for Certification of Pesticide Applicators*. This plan has been filed with and approved by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. §§ 136—136y). Records of training will be maintained by the Department and a yearly statement will be sent to each private applicator describing credits obtained and credits due to meet recertification standards. Training will be approved under § 128.45(c).

(c) If a private applicator fails to renew his permit by the date of expiration, renewal requires the following:

(1) Completion of due recertification credits as described in subsections (a) and (b).

(2) Completion of the examination requirements as described in §§ 128.3, 128.61 and 128.62 (relating to fees; determination of competence; and eligibility) by the applicator if the due recertification credits are not completed within 1 year from the expiration date of the permit.

Cross References

This section cited in 7 Pa. Code § 128.64 (relating to fumigation by a private applicator).

§ 128.64. Fumigation by a private applicator.

(a) In addition to the requirements in § 128.61 (relating to determination of competence), a private applicator using structural, commodity and space, or soil fumigants shall demonstrate competence in the proper and safe use of these pesticides. Competency shall be demonstrated by passing a written examination specifically relating to each type of fumigant the applicator intends to use.

(b) A special permit will be issued, relating to fumigation, and will be valid for a 3-year period. A fee will not be charged for this special permit. A special permit will not be issued for the use of a fumigant unless the applicant has a private applicator's permit.

(c) Recertification requirements shall be met through attendance at approved meetings and shall consist of at least two credits of category specific education relating to the appropriate area of fumigation in which the applicator is certified. The credits obtained by a private applicator to meet the requirements of this subsection may also be used to meet the requirements of § 128.63 (relating to recertification).

§ 128.65. Recordkeeping.

(a) A private applicator shall keep for each application of a restricted use pesticide a record containing the following information:

- (1) The date of application. For a pesticide requiring a reentry time, the date of application shall include the hour completed.
- (2) The place of application including the name and address of the farm and the specific field or land area and the crop treated.
- (3) The brand name and formulation of every pesticide used.
- (4) The amount of every pesticide used.
- (5) The dosage or rate of every pesticide used.
- (6) The names and, when applicable, the permit numbers of the persons making or supervising the application.
- (7) The EPA product registration number.
- (8) The size of the area treated.

(b) A record required to be kept under this section shall be maintained for at least 3 years and shall be made immediately available to the Department upon request or immediately available to medical personnel in an emergency.

Source

The provisions of this § 128.65 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5924. Immediately preceding text appears at serial pages (144318) to (144319).

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping).

RECIPROCITY**§ 128.71. General.**

A person who is not a resident of this Commonwealth, but who has a valid license, certificate or permit from another state, may obtain an appropriate Pennsylvania license, certificate or permit if the state in which he is licensed has a reciprocal agreement with the Commonwealth under section 22 of the act (3 P. S. § 111.42). A license, certificate or permit shall be issued under this section only for the initial period of issuance.

Cross References

This section cited in 7 Pa. Code § 128.72 (relating to procedure).

§ 128.72. Procedure.

A person desiring a license under § 128.71 (relating to general) shall submit to the Department a properly completed application, the appropriate fee and evidence of financial responsibility as required along with a copy of the person's current license, certificate or permit.

Subchapter C. PRIOR NOTIFICATION

Sec.	
128.81.	Right-of-way application.
128.82.	Nonagricultural specific site application.
128.83.	Ornamental or turf application.
128.84.	Nonagricultural area-wide application.
128.85.	Agricultural application.
128.86.	Constructive notification.
128.87.	Prior notification by certified mail.
128.88.	Recordkeeping.
128.89.	Notification request.

§ 128.81. Right-of-way application.

(a) *Prior notification required.* A commercial/public applicator may not apply a restricted use pesticide to a right-of-way without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Alternative form of notification.* In lieu of the notification requirements described in subsection (a), an applicator may give prior notification orally or by certified mail to every person residing in a dwelling on land contiguous to the restricted use pesticide application site. This subsection does not apply to an aerial application of a restricted use pesticide.

(c) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from the person designated to receive requests for additional information. Upon the request, the applicator shall provide the following additional information at least 12 hours prior to the time of application:

- (i) The proposed date and time of the application.
- (ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(2) Upon request, the designated person shall, within 10 days of receiving a request under this subsection, provide a copy of the label for every restricted use pesticide to be used.

(d) *Exceptions.* The following types of ground application do not require prior notification:

- (1) Injections internal to utility poles and trees.
- (2) Ground line applications to utility poles.

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.82. Nonagricultural specific site application.

(a) *Prior notification required.* A commercial/public applicator may not make a specific site application of a restricted use pesticide without first giving prior notification orally or by certified mail to every person residing in a dwelling on land contiguous to the application site.

(b) *Additional information.*

(1) Upon request made by a person entitled to notice at least 7 days prior to the proposed application date to the person designated to receive requests for additional information, the applicator shall provide the following additional information at least 12 hours prior to the time of application:

- (i) The proposed date and time of application.
- (ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(2) Upon request, the designated person shall within 10 days of receiving a request under this subsection provide a copy of the label for every restricted use pesticide to be used.

(c) *Exceptions.* The following types of application do not require prior notification:

- (1) An application of a restricted use pesticide within a detached structure.
- (2) An application of a restricted use pesticide where applied directly below the soil surface, except where a well or spring is located within 25 feet of the application site or where a soil fumigant is used.
- (3) An application of a restricted use pesticide in a tamper resistant bait tray or placed in a rodent burrow which is inaccessible to children or pets.

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.83. Ornamental or turf application.**(a) Notification.**

(1) A pesticide business that meets the definitions of category 06 (ornamental and shade trees) or 07 (lawn and turf) of § 128.42 (relating to categories of commercial and public applicators) regarding general use pesticides shall at least 12 hours prior to the time of application provide every person residing in a dwelling on land contiguous to the application site with the following information:

(i) The proposed date and time of application.

(ii) The brand name of every pesticide to be applied including the EPA registration number.

(2) Within 10 days of receiving a request, the pesticide application business shall provide a copy of the label for every pesticide to be used.

(b) *Exceptions.* A person is not entitled to notification under subsection (a) unless the person makes a written request at least 7 days prior to the proposed date of application.

(c) *Premises sharing mutual border.* The request described in subsection (b) shall list by street address premises which share a mutual border with the premises owned by the person making the request.

Source

The provisions of this § 128.83 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5924. Immediately preceding text appears at serial page (144321).

Cross References

This section cited in 7 Pa. Code § 128.112 (relating to notification of hypersensitive individuals); and 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.84. Nonagricultural area-wide application.

(a) *Prior notification required.* A commercial/public applicator may not make an area-wide application of a restricted use pesticide without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) Additional information.

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from a person designated to receive requests for additional information. Upon the request, the applicator shall provide the following information at least 12 hours prior to the time of application:

(i) The proposed date and time of application.

(ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(2) Within 10 days of receiving a request under this subsection, the designated person shall provide a copy of the label for every restricted use pesticide to be used.

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.85. Agricultural application.

(a) *Prior notification required.* A commercial/public applicator may not apply a restricted use pesticide for an agricultural purpose without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the restricted use pesticide application site may request additional information from a person designated to receive requests for additional information. Upon the request, the applicator shall at least 12 hours prior to the time of application, provide the following additional information:

(i) The proposed date and time of application.

(ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(2) Within 10 days of receiving a request under this subsection, the designated person shall provide a copy of the label for every restricted use pesticide to be used.

(3) The person making a request under this subsection shall identify in his request the name and address of every person operating agricultural land which shares a common border with property owned by the person making the request.

(c) *Use of placards.* In lieu of requirements contained in subsections (a) and (b), an applicator may give prior notification orally or by certified mail to every person residing in a dwelling on land contiguous to the restricted use pesticide application site or may post placards around the application site at least 18 hours prior to the time of application. If the applicator uses placards, the placards shall contain the information required by this section for prior notification.

(d) *Exceptions.* An application of a restricted use pesticide does not require prior notification where applied directly below the soil surface, except where a well or spring is located within 25 feet of the application site or a soil fumigant is used.

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.86. Constructive notification.

A person shall be deemed to have received notification under this subchapter if an adult residing in the same dwelling is so notified.

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.87. Prior notification by certified mail.

If this subchapter authorizes an applicator to give prior notification by certified mail, the prior notification shall be effective upon receipt.

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.88. Recordkeeping.

(a) The applicator shall keep, for each occasion in which prior notification is required, a record containing the following information:

- (1) A copy of the newspaper advertisement or a statement describing other methods of prior notification that this chapter authorizes.
- (2) The name and address of every person requesting additional information.
- (3) The date and time of individual notification.
- (4) A copy of correspondence relating to prior notification.

(b) A record required to be kept under this section shall be maintained for at least 3 years and shall be made immediately available to the Department upon request.

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping); and 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.89. Notification request.

A request for notification made under this subchapter shall expire on December 31 in the year in which it is made.

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

Subchapter D. REGISTRATION OF PESTICIDES

Sec.

128.91. EPA registration required.

128.92. Special local need registration.

§ 128.91. EPA registration required.

Only a pesticide with an approved EPA registration will be accepted for registration by the Department.

§ 128.92. Special local need registration.

(a) Special local need registrations are subject to approval by the Department for pesticides currently registered for use in this Commonwealth. A special local need label shall conform with 40 CFR 162.153(e) (relating to state registration procedures).

(b) A copy of the proposed special local need use label, supporting data and a statement verifying the existence of a special local need shall be submitted with the completed form provided by the Department for special local need registration.

(c) A pesticide registered under this section may be cancelled by the Department or by the EPA.

Subchapter E. MISCELLANEOUS

Sec.

128.101. Reporting of pesticide accidents.

128.102. Protected designated areas.

128.103. Handling, transportation, storage, use and disposal of pesticides.

128.104. Experimental use permits.

128.105. Additional responsibilities of certified applicators.

128.106. Additional responsibilities within school buildings.

§ 128.101. Reporting of pesticide accidents.

(a) The Secretary has designated the Department as the State agency to which significant pesticide accidents or incidents shall be reported.

(b) An applicator, a pesticide application technician or another person who has knowledge of a significant pesticide accident or incident shall report it to the Department.

(c) As used in this section, the term “significant pesticide accident or incident” means an accident or incident involving a pesticide which creates a danger to human beings or results in damage to plant or animal life.

(d) This section does not supersede the reporting procedures of other statutes or the regulations promulgated thereunder.

§ 128.102. Protected designated areas.

(a) An application of a restricted use pesticide within 100 feet of certain publicly-owned or designated lands will not be permitted unless a waiver is granted by the Secretary. Lands affected by this restriction include:

(1) State forest land designated "Natural Areas and Wild Areas."

(2) Areas containing endangered or rare organisms. These organisms are identified at 17 Pa. Code Chapter 45 (relating to conservation of Pennsylvania native wild plants); and 58 Pa. Code Chapters 75 and 133 (relating to endangered species; and wildlife classification).

(b) A person may file a request with the Secretary for a waiver of the prohibition contained in subsection (a). The request will contain the following information:

(1) A general statement relating to the purpose and need for the pesticide application.

(2) Specific evaluation of possible detrimental effects on water quality, air quality, groundwater, public health and safety, nontarget plants and animals, habitat diversity and interspersed and biological productivity.

(3) Specific evaluation of expected benefits.

(4) Additional information which may be requested by the Secretary.

(c) A request for a waiver shall be submitted at least 90 days prior to the proposed date of pesticide application.

§ 128.103. Handling, transportation, storage, use and disposal of pesticides.

(a) A person may not use, handle, transport, store, display or distribute a pesticide in a manner that endangers man or his environment or contaminates food, feed, feed supplements, medications, fertilizers, seed or other products that may be handled, transported, stored, displayed or distributed with the pesticides.

(b) A person may not use, or cause to be used, a pesticide inconsistent with its labeling. A pesticide label containing an advisory instruction concerning the use of the pesticide being an environmental hazard shall be considered by the Secretary as a further restriction on the pesticide's use.

(c) An application of a pesticide may not be made where weather conditions are such that it can be expected that the pesticide will move off of the proposed application site.

(d) A person may not dispose of, store or receive for disposal or storage a pesticide, pesticide container or pesticide container residue in a manner that does one or more of the following:

(1) Is inconsistent with its label or labeling.

(2) Causes or allows the open dumping of pesticides or pesticide containers. Open burning by the owner of small quantities of combustible containers that do not exceed 50 pounds is exempt if the pesticide residue does not con-

tain organic mercury, chlorates, lead, cadmium or arsenic compounds and the Commonwealth or local regulations permit the burning. When the burning takes place, regard shall be given to wind direction in relation to the protection of crops, animals and people from pesticide vapors created through burning.

(3) Causes or allows dumping of pesticides in a stream, river, pond, sewer or lake, except in conformance with permits issued jointly by the Department of Environmental Protection and the Fish and Boat Commission, or other Commonwealth agencies having jurisdiction regarding water pollution.

(4) Violates an applicable State or Federal pollution control standard.

(e) A person shall dispose and store pesticides, pesticide containers and pesticide container residue in accordance with acts and regulations administered by the EPA and the Department of Environmental Protection.

(f) A person may not directly apply pesticides to the property of another without first obtaining permission of the owner, or occupant having care, custody or control of the property to do so, except in the case of easements or right-of-ways or when done under the direction of a governmental entity to protect the health and welfare of the public.

(g) A person may not use a pesticide in a manner which results in unwanted residues on the property of another, except in the case of easements or right-of-ways or when done under the direction of a governmental entity to protect the health and welfare of the public.

(h) A person may not apply a pesticide unless it has been registered by the Department or it is used under the provisions of an experimental use permit or research conducted under an exemption from an experimental use permit.

(i) A person may not store, transport or otherwise possess a pesticide in a service container unless the service container is legibly marked to indicate the name and percentage of active ingredients and is accompanied by a readily available copy of the registered label that represents the pesticides contained therein. The following exceptions apply:

(1) Service containers containing pesticide end-use dilutions when the containers are used as application devices.

(2) Service containers containing pesticide end-use dilutions which are required by other regulations to have pesticide label information accompany them.

(3) Service containers containing pesticide end-use dilutions when the containers are used as nurse tanks (with a capacity greater than 55 gallons) in the production of an agricultural commodity.

(j) A person may not place or keep a pesticide in a container which has been labeled for food or drink.

Source

The provisions of this § 128.103 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5924. Immediately preceding text appears at serial pages (169377) to (169378).

§ 128.104. Experimental use permits.

The Department shall be notified prior to the use in this Commonwealth of a pesticide with an approved EPA experimental use permit. Notification shall include copies of the EPA approval letter, a properly completed product label as defined in 40 CFR 172.6 (relating to labeling) and a list of the participants and cooperators involved in the program.

§ 128.105. Additional responsibilities of certified applicators.

(a) A certified applicator is responsible for the actions of persons acting under his supervision and shall instruct the persons in the method of application for the pesticides that will be applied.

(b) A certified applicator shall be present at the application site on a routine basis to evaluate the work performance of those working under his supervision. The amount of time that a certified applicator spends at the application site shall be based upon the competence and experience of the person being supervised.

(c) A certified applicator shall be physically present at the application site if the label for the pesticides being applied so requires.

§ 128.106. Additional responsibilities within school buildings.

A pesticide other than a disinfectant or sanitizer may not be applied in a common access area within a school building when students are expected to be in the common access area for normal academic instruction or organized extracurricular activities within 7 hours following the application. The applicator shall also comply with reentry time restrictions contained on the pesticide label, whichever is greater.

Source

The provisions of this § 128.106 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5924.

**Subchapter F. PESTICIDE
HYPERSENSITIVITY REGISTRY**

Sec.

128.111. Registry.

128.112. Notification of hypersensitive individuals.

Source

The provisions of this Subchapter F adopted December 22, 1995, effective December 23, 1995, 25 Pa.B. 5924, unless otherwise note.

§ 128.111. Registry.

(a) The Department will maintain a list of individuals who have been verified as being hypersensitive to pesticides. The list will be referred to as the Pesticide Hypersensitivity Registry.

(b) Individuals who want to be included on the registry shall have their hypersensitivity to pesticides verified by a physician, and are solely responsible for providing written verification to the Department.

(c) A pesticide-hypersensitive individual who wants to be on the registry shall provide to the Department his name and primary residence including street address, city, state, zip code, county, daytime telephone number and nighttime telephone number. Each individual shall also provide an alternate telephone number where notification information can be conveyed. Individuals may also provide secondary locations, addresses and associated telephone numbers to be maintained as part of their listing. An individual submitting a request for listing less than 2 months preceding the effective date, as described in subsection (e), may not be included on the current registry with that effective date, but will be included in the next registry.

(d) To remain on the registry, an individual shall notify the Department annually during the month of January of the individual's intent to remain on the registry for the next 12 months. Medical verification will not be required for this renewal.

(e) The Department will mail the current registry to each licensed commercial and public pesticide application business on or before the effective dates of March 1, June 1, September 1 and December 1 of each year. An individual will not be considered officially included on the registry unless his name appears on the current registry.

§ 128.112. Notification of hypersensitive individuals.

(a) *General.* Prior to a pesticide application being made by a commercial or public pesticide application business the following conditions shall be met:

(1) Each individual listed on the current registry whose primary residence or secondary locations property line is within 500 feet of the application site shall be notified of the pesticide application.

(2) Notification shall consist of providing the following information to the individual on the registry:

(i) Date, location (application site), earliest possible start time and latest possible finish time of application. The range between start and finish times may be no greater than 24 hours.

(ii) Brand name, EPA number and active ingredient common name (if on the label) of the pesticide products which may be used.

(iii) The name, telephone number and pesticide business license number of the pesticide application business.

- (iv) A copy of the label for every pesticide used within 10 days of a request.
- (3) Notification shall be made between 12 hours and 72 hours prior to the pesticide application.
- (4) Notification shall be made by telephone, personal contact or certified mail.
 - (i) Notification requirements are met if the information is placed on a telephone answering device activated by calling the registrant's telephone number, or if the information is given to an adult contacted by dialing the daytime, nighttime or alternate telephone number.
 - (ii) If notification cannot be made after at least two telephone contact attempts, notification may be made by placing the written notification information on the front door of the listed residence or location.
 - (iii) A record shall be kept of every telephone contact and contact attempt made under this paragraph.
- (b) *Exceptions.* The following types of application do not require notification under this section:
 - (1) An application of a pesticide within a single family residential detached structure.
 - (2) An application of a pesticide directly below the soil surface.
 - (3) An application of a pesticide in a tamper-resistant bait station.
 - (4) An application of a pesticide to a tree by means of injection. Prior notification requirements contained in § 128.83 (relating to ornamental or turf application) remain applicable.
 - (5) An application of a disinfectant or sanitizer.
- (c) *Recordkeeping.* A record of the notification information required under this section, including the time and method of notification, shall be maintained for at least 3 years and shall be made immediately available to the Department upon request or to medical personnel in an emergency.

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

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